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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,153	09/09/2003	Amy Rutkowski	2535.110	9989

7590 10/06/2005

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EXAMINER

SINGH, SUNIL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/657,153

Applicant(s)

RUTKOWSKI, AMY

Examiner

Sunil Singh

Art Unit

3673

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 26 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 1-13 and 20.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 14-19.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

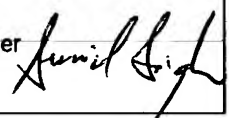
**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Sunil Singh  
Primary Examiner  
Art Unit: 3673



Continuation of 3. NOTE: Claim 19 was amended to include "and for positioning an infant in a substantially horizontal position" which would require further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because: With regards to claims 14-18, applicant argues that Alivizatos does not disclose a baby changing apparatus. This is not concurred with. There is no structure in applicant's claims precluding the interpretation of Alivizatos from being a baby changing apparatus. For example, one can change a baby's diaper in a car seat, on the floor, on a counter top, on a bed, on a chair cushion, etc.; therefore, the examiner fails to see why Alivizatos cannot be construed as a baby diaper changing apparatus. Applicant argues that Alivizatos restraining means is used to restrain an infant in a reclined position. The examiner agrees; however, it should be noted that Alivizatos restraining means is also used to restrain an infant in a horizontal position (see col. 4). Applicant argues that there is no motivation to modify the structure of Alivizatos with the restraining means of Gottfried. The examiner disagrees, Alivizatos teaches lower restraining means and Gottfried teaches upper restraining means and it would have been considered obvious to one of ordinary skill in the art to modify to Alivizatos to include the restraining means as taught by Gottfried since this restrains the baby from falling off the baby diaper changing pad. It should be noted that if one were faced with the problem of restraining a baby on a support structure one skilled in the art would look to use either upper or lower or both upper and lower restraining means as evidenced by Alivizatos and Gottfried. It should also be noted that the examiner modifies Alivizatos to include the restraining means as taught by Gottfried in order to further restrain the baby from falling off the support structure.

SUNIL SACH  
PRIMARY PATENT EXAMINER

